

Securities and Exchange Commission

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securities of a particular class or series, in which case, State law shall apply.

(Secs. 6(c), 13, 15(a), 15(b), 16(a), 18(f)(2), 32(a), 54 Stat. 800, 811, 812, 813, 817, 838, 841, 15 U.S.C. 80a-6(c), 80a-13, 80a-15(b), 80a-16(a), 80a-18(f)(2), 80a-31(a), 80a-37(a), Pub. L. 91-547, 84 Stat. 1421)

[37 FR 17386, Aug. 26, 1972]

§ 270.18f-3 Multiple class companies.

Notwithstanding sections 18(f)(1) and 18(i) of the Act (15 U.S.C. 80a-18(f)(1) and (i), respectively), a registered open-end management investment company or series or class thereof established in accordance with section 18(f)(2) of the Act (15 U.S.C. 80a-18(f)(2)) whose shares are registered on Form N-1A [§§ 239.15A and 274.11A of this chapter] (“company”) may issue more than one class of voting stock, *provided that*:

(a) Each class:

(1)(i) Shall have a different arrangement for shareholder services or the distribution of securities or both, and shall pay all of the expenses of that arrangement;

(ii) May pay a different share of other expenses, not including advisory or custodial fees or other expenses related to the management of the company’s assets, if these expenses are actually incurred in a different amount by that class, or if the class receives services of a different kind or to a different degree than other classes; and

(iii) May pay a different advisory fee to the extent that any difference in amount paid is the result of the application of the same performance fee provisions in the advisory contract of the company to the different investment performance of each class;

(2) Shall have exclusive voting rights on any matter submitted to shareholders that relates solely to its arrangement;

(3) Shall have separate voting rights on any matter submitted to shareholders in which the interests of one class differ from the interests of any other class; and

(4) Shall have in all other respects the same rights and obligations as each other class.

(b) Expenses may be waived or reimbursed by the company’s adviser, un-

derwriter, or any other provider of services to the company.

(c)(1) Income, realized gains and losses, unrealized appreciation and depreciation, and Fundwide Expenses shall be allocated based on one of the following methods (which method shall be applied on a consistent basis):

(i) To each class based on the net assets of that class in relation to the net assets of the company (“relative net assets”);

(ii) To each class based on the Simultaneous Equations Method;

(iii) To each class based on the Settled Shares Method, *provided that* the company is a Daily Dividend Fund (such a company may allocate income and Fundwide Expenses based on the Settled Shares Method and realized gains and losses and unrealized appreciation and depreciation based on relative net assets);

(iv) To each share without regard to class, *provided that* the company is a Daily Dividend Fund that maintains the same net asset value per share in each class; that the company has received undertakings from its adviser, underwriter, or any other provider of services to the company, agreeing to waive or reimburse the company for payments to such service provider by one or more classes, as allocated under paragraph (a)(1) of this section, to the extent necessary to assure that all classes of the company maintain the same net asset value per share; and that payments waived or reimbursed under such an undertaking may not be carried forward or recouped at a future date; or

(v) To each class based on any other appropriate method, *provided that* a majority of the directors of the company, and a majority of the directors who are not interested persons of the company, determine that the method is fair to the shareholders of each class and that the annualized rate of return of each class will generally differ from that of the other classes only by the expense differentials among the classes.

(2) For purposes of this section:

(i) *Daily Dividend Fund* means any company that has a policy of declaring distributions of net income daily, including any money market fund that

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determines net asset value using the amortized cost method permitted by § 270.2a-7;

(ii) *Fundwide Expenses* means expenses of the company not allocated to a particular class under paragraph (a)(1) of this section;

(iii) The *Settled Shares Method* means allocating to each class based on relative net assets, excluding the value of subscriptions receivable; and

(iv) The *Simultaneous Equations Method* means the simultaneous allocation to each class of each day's income, realized gains and losses, unrealized appreciation and depreciation, and Fundwide Expenses and reallocation to each class of undistributed net investment income, undistributed realized gains or losses, and unrealized appreciation or depreciation, based on the operating results of the company, changes in ownership interests of each class, and expense differentials between the classes, so that the annualized rate of return of each class generally differs from that of the other classes only by the expense differentials among the classes.

(d) Any payments made under paragraph (a) of this section shall be made pursuant to a written plan setting forth the separate arrangement and expense allocation of each class, and any related conversion features or exchange privileges. Before the first issuance of a share of any class in reliance upon this section, and before any material amendment of a plan, a majority of the directors of the company, and a majority of the directors who are not interested persons of the company, shall find that the plan as proposed to be adopted or amended, including the expense allocation, is in the best interests of each class individually and the company as a whole; initial board approval of a plan under this paragraph (d) is not required, however, if the plan does not make any change in the arrangements and expense allocations previously approved by the board under an existing order of exemption. Before any vote on the plan, the directors shall request and evaluate, and any agreement relating to a class arrangement shall require the parties thereto to furnish, such information as may be

reasonably necessary to evaluate the plan.

(e)(1) A majority of the directors of the investment company are not interested persons of the company, and those directors select and nominate any other disinterested directors of the company; and

(2) Any person who acts as legal counsel for the disinterested directors of the company is an independent legal counsel.

(f) Nothing in this section prohibits a company from offering any class with:

(1) An exchange privilege providing that securities of the class may be exchanged for certain securities of another company; or

(2) A conversion feature providing that shares of one class of the company (the "purchase class") will be exchanged automatically for shares of another class of the company (the "target class") after a specified period of time, *provided that*:

(i) The conversion is effected on the basis of the relative net asset values of the two classes without the imposition of any sales load, fee, or other charge;

(ii) The expenses, including payments authorized under a plan adopted pursuant to § 270.12b-1 ("rule 12b-1 plan"), for the target class are not higher than the expenses, including payments authorized under a rule 12b-1 plan, for the purchase class; and

(iii) If the shareholders of the target class approve any increase in expenses allocated to the target class under paragraphs (a)(1)(i) and (a)(1)(ii) of this section, and the purchase class shareholders do not approve the increase, the company will establish a new target class for the purchase class on the same terms as applied to the target class before that increase.

(3) A conversion feature providing that shares of a class in which an investor is no longer eligible to participate may be converted to shares of a class in which that investor is eligible to participate, *provided that*:

(i) The investor is given prior notice of the proposed conversion; and

(ii) The conversion is effected on the basis of the relative net asset values of

the two classes without the imposition of any sales load, fee, or other charge.

[60 FR 11885, Mar. 2, 1995, as amended at 62 FR 51765, Oct. 3, 1997; 66 FR 3759, Jan. 16, 2001]

§ 270.19a-1 Written statement to accompany dividend payments by management companies.

(a) Every written statement made pursuant to section 19 by or on behalf of a management company shall be made on a separate paper and shall clearly indicate what portion of the payment per share is made from the following sources:

(1) Net income for the current or preceding fiscal year, or accumulated undistributed net income, or both, not including in either case profits or losses from the sale of securities or other properties.

(2) Accumulated undistributed net profits from the sale of securities or other properties (except that an open-end company may treat as a separate source its net profits from such sales during its current fiscal year).

(3) Paid-in surplus or other capital source.

To the extent that a payment is properly designated as being made from a source specified in paragraph (a) (1) or (2) of this section, it need not be designated as having been made from a source specified in this paragraph.

(b) If the payment is made in whole or in part from a source specified in paragraph (a)(2) of this section the written statement shall indicate, after giving effect to the part of such payment so specified, the deficit, if any, in the aggregate of (1) accumulated undistributed realized profits less losses on the sale of securities or other properties and (2) the net unrealized appreciation or depreciation of portfolio securities, all as of a date reasonably close to the end of the period as of which the dividend is paid. Any statement made pursuant to the preceding sentence shall specify the amount, if any, of such deficit which represents unrealized depreciation of portfolio securities.

(c) Accumulated undistributed net income and accumulated undistributed net profits from the sale of securities or other properties shall be deter-

mined, at the option of the company, either (1) from the date of the organization of the company, (2) from the date of a reorganization, as defined in clause (A) or (B) of section 2(a)(33) of the Act (54 Stat. 790; 15 U.S.C. 80a-2(a)(33)), (3) from the date as of which a write-down of portfolio securities was made in connection with a corporate readjustment, approved by stockholders, of the type known as "quasi-reorganization," or (4) from January 1, 1925, to the close of the period as of which the dividend is paid, without giving effect to such payment.

(d) For the purpose of this section, open-end companies which upon the sale of their shares allocate to undistributed income or other similar account that portion of the consideration received which represents the approximate per share amount of undistributed net income included in the sales price, and make a corresponding deduction from undistributed net income upon the purchase or redemption of shares, need not treat the amounts so allocated as paid-in surplus or other capital source.

(e) For the purpose of this section, the source or sources from which a dividend is paid shall be determined (or reasonably estimated) to the close of the period as of which it is paid without giving effect to such payment. If any such estimate is subsequently ascertained to be inaccurate in a significant amount, a correction thereof shall be made by a written statement pursuant to section 19(a) of the Act or in the first report to stockholders following discovery of the inaccuracy.

(f) Insofar as a written statement made pursuant to section 19(a) of the Act relates to a dividend on preferred stock paid for a period of less than a year, a company may elect to indicate only that portion of the payment which is made from sources specified in paragraph (a)(1) of this section, and need not specify the sources from which the remainder was paid. Every company which in any fiscal year elects to make a statement pursuant to the preceding sentence shall transmit to the holders of such preferred stock, at a date reasonably near the end of the last dividend period in such fiscal